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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,078	05/31/2001	Thomas D. Taggart	STEU-3250	9319
5409	7590	03/08/2004	EXAMINER	
ARLEN L. OLSEN SCHMEISER, OLSEN & WATTS 3 LEAR JET LANE SUITE 201 LATHAM, NY 12110			TAWFIK, SAMEH	
			ART UNIT	PAPER NUMBER
			3721	26

DATE MAILED: 03/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/871,078

Applicant(s)

TAGGART, THOMAS D.

Examiner

Sameh H. Tawfik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20,22-39,41-51 and 53-73 is/are pending in the application.
- 4a) Of the above claim(s) 23-34 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 45-47 and 60-62 is/are allowed.
- 6) ☒ Claim(s) 20,22,35-39,41-44,48-51,53-59 and 63-73 is/are rejected.
- 7) ☒ Claim(s) 41,43 and 53 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Claim Objections

Claims 41, 43, and 53 are objected to because of the following informalities: claims 41, 43, and 53 are depending from canceled claims 40 and 52. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20, 22, 35-39, 41-44, 48-51, 53-59, and 63-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over BOSCH in view of De Stoutz (3,934,042).

BOSCH discloses a method and apparatus for aseptically bottles comprising the step and means for providing a plurality of bottles (Figs. on page 3); aseptically disinfecting the plurality of bottles (page 2, column 1); aseptically filling the aseptically disinfected plurality of bottles with the foodstuffs (page 2, columns 1 and 2); and aseptically disinfected plurality of bottles at a rate greater than 100 bottle per minute (page 2, column 1) note that the machine can be operated to produce 33,600 bottle per hour which is equal to 560 bottles per minute, wherein the disinfecting is with hot atomized hydrogen peroxide (page 1, column 2, lines 3 and 4; column 3, lines 1-4; page 2, column 2, lines 7-13 and column 3, lines 4-6), means for disinfecting an interior of the bottles (page 2, Fig. at the bottom right corner). BOSCH does not disclose aseptically filling the bottles with aseptically sterilized foodstuffs. However, Stoutz discloses the step and means for aseptically sterilized foodstuffs (column 1, lines 5-10).

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Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have modified BOSCH's method and apparatus for aseptically bottling foodstuffs by having the step and means for aseptically sterilized foodstuffs, as suggested by Stoutz, in order to increase the shelf life or storability of the treated beverage (column 1, lines 22-24)

Regarding claim 37 and 51: the reference of the prior art discloses the claimed invention except for the plastic is selected from the group of polyethylene terephthalate and high density polyethylene. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified BOSCH's method for aseptically packaging aseptically sterilized foodstuffs by having plastic is selected from the group of polyethylene terephthalate and high density polyethylene, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin; supra*.

Regarding claim 39: BOSCH discloses capping the container with aseptically disinfected lid (page 2, column 1).

Regarding claims 41, 43, 52, 53, and 57: BOSCH discloses disinfecting the interior of the plurality of container includes the application of the hydrogen peroxide spray and the activation and removal of the hydrogen peroxide using a sterilized air (page 2). BOSCH does not disclose the range of the application of the hot hydrogen peroxide for about 1 second and the removal of the hot hydrogen peroxide using hot air about 24 seconds. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified BOSCH's method for aseptically packaging aseptically sterilized foodstuffs by having range of

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the application of the hot hydrogen peroxide for about 1 second and the removal of the hot hydrogen peroxide using hot air about 24 seconds, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding claims 42 and 54: BOSCH discloses a feedback control system (page 2, line 3) for maintaining aseptic container conditions.

Regarding claim 56: BOSCH disclose that disinfecting the container from the outside surfaces (page 2, column 1).

Regarding claims 63 and 64: Bosch nor Stoutz disclose that the aseptically sterilized foodstuffs are not a beverage. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Bosch in view of Stoutz method and apparatus for aseptically bottles by having the aseptically sterilized foodstuffs are not a beverage, since the examiner takes an official notice that the aseptically sterilized beverage or non-beverage foodstuffs is old, well known, and available in the art, and Stoutz's machine for sterilizing beverage foodstuff should be able to sterilize any other food products.

Regarding claims 65 and 66: Bosch does not disclose that the bottles are in an upright position during disinfecting. However, it would have been an obvious matter of design choice to have modified Bosch's method and apparatus by having the bottles in an upright position during disinfecting, since applicant has not disclosed that bottles are in an upright position during disinfecting solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with disinfecting the bottle upside down as suggested by Bosch.

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Regarding claim 67: Bosch discloses that the bottles are made from glass (page 2, column 3, lines 4 and 5). Bosch does not disclose that the bottles are made of plastic. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Bosch's method and apparatus for aseptically bottles by having the bottles are made of plastic, since the examiner takes an official notice that plastic bottles are old, well known, and available in the art.

Regarding claim 71: Bosch discloses that the aseptically disinfecting the bottles includes an application of the hot hydrogen peroxide spray into an interior of the bottle (page 2, column 1, lines 7-10 and column 2, line 7-13) and removal of hydrogen peroxide using hot sterilized air (page 2, lines 10-12).

Regarding claims 72 and 73: Bosch does not disclose that aseptically denotes meeting the United States FDA level of aseptic. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Bosch's a method and apparatus for aseptically bottles by having the aseptically denotes meeting the United States FDA level of aseptic, since the examiner takes an official notice that aseptically denotes meeting the United States FDA level of aseptic is old, well known, and available in the art and applicant admitted in the background of the invention that packaging of food products and an aseptic filler must meet FDA approval (page 2, lines 18-22).

Allowable Subject Matter

Claims 45-47 and 60-62 allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is (703) 308-2809. The examiner can normally be reached on Tuesday - Friday from 8:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ST.

Sameh H. Tawfik
Patent Examiner
Art Unit 3721

